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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: PHILADELPHIA Date: NOV 01 2004

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Philadelphia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for submitting a fraudulent passport in connection with her entry into the United States on October 10, 1995. The applicant subsequently married her U.S. citizen spouse on September 23, 2000, in East Lansdowne, Pennsylvania. The applicant's spouse then submitted a Petition for Alien Relative (Form I-130), on behalf of the applicant on February 16, 2001, and the applicant simultaneously applied for adjustment of status pursuant to section 245 of the Act. The I-130 petition was approved on July 29, 2002. During the course of the applicant's adjustment of status interview it became apparent that the applicant had entered the United States through fraud. The applicant, through counsel, was advised to submit an Application for a Waiver of Grounds of Excludability (Form I-601) pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to seek a waiver of the ground of inadmissibility and allow her to remain in the United States with her United States citizen spouse.

The district director issued a decision denying the waiver application on August 21, 2002, on the basis that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, in this case her U.S. citizen spouse. *Decision of the District Director,* dated August 21, 2002. Counsel submitted an appeal on September 12, 2002, providing a brief statement in support of the appeal which was supplemented by a brief on October 10, 2002.

Counsel argues that numerous factors support the grant of the waiver and alleges that the district director erred in finding that the applicant had failed to establish extreme hardship. Counsel's brief states that the applicant has "submitted overwhelming evidence of extreme hardship her United Stated [sic] husband, child, [a]unt and other family members would suffer should she have to depart the United States." *Counsel's Appeal Brief,* at p.2. We will review the district director's decision and proceed to examine the evidence contained in the record, including additional evidence submitted on appeal.

On appeal, counsel asserts that the waiver application should be granted based upon the hardship that will befall the applicant's U.S. citizen spouse due to the breakup of family in the United States. Counsel further noted that the great distance and high cost of air travel and telephone rates would cause a separation that would result in the loss of any meaningful contact between the families. Furthermore, counsel notes that the applicant's husband would experience extreme hardship due to the difficult economic and political situation in Jamaica should he decide to accompany the applicant to Jamaica. In particular, counsel emphasizes the high unemployment rate, the country's propensity for adverse weather, and the breakdown of law and order due to its political and economic instability. *See Counsel's Appeal Brief, at pp 4-6.* Counsel attaches exhibits on appeal in support of the claims regarding the difficulties in Jamaica. This decision will address all arguments and supporting documents now in the record.

The record contains several documents and exhibits in support of the application. The principal documents submitted include statements from the applicant's husband and the husband's mother, aunt, and uncle, noting the love and affection within the family unit and detailing the hardship that the family will experience as a result of the applicant's exclusion from the United States. However, noticeably absent from the record is any

statement from the applicant herself explaining the circumstances surrounding her admission to the United States using a false passport, or otherwise offering any reasons as to why the waiver ought to be granted. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
>
> (ii) Falsely claiming citizenship. –
>
> (I) In General –
>
> Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.
>
> . . . .
>
> (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that during the summer of 1996 the applicant entered the United States through the use of a fraudulent passport. She married her U.S. citizen spouse who then filed an I-130 on her behalf. The applicant subsequently filed the Form I-601 waiver application.

Counsel contends that the district director erred in failing to conclude that the record establishes that applicant's removal would result in extreme hardship to her U.S. citizen family members. [1]

[1] Although the record contains numerous references to the hardship that will be suffered by the spouse's U.S. citizen step-children, the AAO notes that hardship suffered by the children of the applicant is irrelevant to waiver proceedings under section 212(i) of the Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel has offered the previously described documentation in support of the waiver application. The majority of the documents offered are brief statements from family members, noting the close, loving relationship among the applicant and her family members and the fact that her loss would be deeply felt.

However, those documents, while they do indicate that the applicant has a close and supportive relationship with her family, do not establish that her husband will suffer extreme hardship as a result of the applicant's inability to remain in the United States. The brief letter from the applicant's mother in-law, dated October 6, 2001, asserts simply that if the applicant were sent back to Jamaica it would be a tremendous loss for the family.

The principal documents in the record are the statements submitted by the applicant's spouse. Those statements likewise address the close relationship between the applicant and her stepdaughter, and further indicate that the prospect of losing his wife has caused him pain, suffering and extreme hardship. The applicant's spouse does not profess to be financially dependent upon the applicant, and therefore, the hardship cannot be said to be economic hardship. In general, the spouse's statements focus on the support offered by the applicant, including the fact that she cares for him when he suffers from allergies or the flu. The spouse's principal assertion appears to be that she provides him with emotional support and provides him "with more love and care" than all of the women he had previously dated. He concludes by saying that her loss " would tear his heart in two." *See Statement of James Scott III,* dated October 9, 2001.

Little else has been submitted in support of the requested waiver. Although counsel has submitted newspaper media accounts of the difficulties facing Jamaica, these difficulties are matters which the population as a whole experiences as a result of that country's lower standard of living and economic situation. While life in Jamaica will undoubtedly be more difficult for the applicant's spouse, it cannot be said to be extreme hardship, as there do not appear to be factors unique to the applicant's spouse or to U.S. citizens living in

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Hardship experienced by the applicant's step-children is therefore only considered to the extent that it impacts the hardship suffered by the applicant's spouse, the qualifying relative in the application.

Jamaica, as opposed to the general population of Jamaica. We further note that while counsel has made various assertions regarding the difficulties the applicant's husband would face should he decide to relocate in Jamaica with the applicant, there is little in the way of objective evidence to support those claims, or that the applicant's spouse must relocate to Jamaica. Moreover, the assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983*); Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, it appears that the family unit is experiencing the normal results of deportation, and that the resulting hardship does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.